

P-421/C-90-437 ORDER PROHIBITING TERMINATION OF SERVICE AND
CLARIFYING ADJUSTMENT POLICY

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
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In the Matter of a Complaint
Filed by Love, Inc. Against U.S.
West Communications, Inc.
Regarding Billing and Collections
Services Provided for 976
Information Delivery Services

ISSUE DATE: April 9, 1991

DOCKET NO. P-421/C-90-437

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SERVICE AND CLARIFYING ADJUSTMENT
POLICY

PROCEDURAL HISTORY

On May 24, 1990, Love, Inc., a subsidiary of System Dynamics, Inc., filed a complaint against U.S. West Communications, Inc. (US WEST). The complaint alleged that US WEST had threatened to disconnect Love, Inc. from "976" service, and had granted improper adjustments to Love, Inc.'s customers, deducting the related charges from Love Inc.'s revenues.

On June 13, 1990, US WEST filed its answer to Love, Inc.'s complaint.

On September 28, 1990, the Department of Public Service (the Department) filed its report and recommendation. The Residential Utilities Division of the Office of the Attorney General (RUD-OAG) filed comments on November 26, 1990.

Between June, 1990, and February, 1991, the parties served numerous information requests and answers upon one another.

On March 28, 1991, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

Background

US WEST offers a service called "976" to subscribing companies which provide information for a fee (information providers or IPs). Callers, using US WEST access lines, reach the information providers by dialing 1-976-xxxx. The information providers

charge the end users for the information or entertainment provided. Uses for 976 services include horticultural information, dating services, weather reports, and chat lines. Information providers, not US WEST, control the message or information made available to calling customers.

US WEST's 976 service provides IPs with network access, call transport, call registering, rating, and billing of calls. Fees charged by information providers are included on the end user's regular US WEST monthly bill. The IPs in turn pay US WEST the approved tariffed rates for 976 service.

On March 10, 1988, the Commission issued its ORDER REQUIRING 976 BLOCKING. In the Matter of the Commission Initiated Investigation of the Reasonableness of Dial Data Service Offered by Northwestern Bell Telephone Company, Docket No. P-421/CI-87-631; In the Matter of a Tariff Revision Filing by Northwestern Bell Telephone Company Regarding Standards for Information Providers of Dial Data Service, Docket No. P-421/M-86-533; In the Matter of a Tariff Revision Filing by Northwestern Bell Telephone Company Regarding the Blocking of Calls to Dial Data Information Providers, Docket No. P-421/M-87-602. In that Order the Commission decided, among other things, the following:

1. Northwestern Bell Telephone Company [now known as US WEST] was allowed to continue offering 976 service in all areas where the service was previously offered, provided the Company made blocking of the service available to all residential and business customers upon request and without additional charge.
2. Northwestern Bell Telephone Company was to "continue its liberal refund policy for disputed 976 charges."
3. Northwestern Bell Telephone Company was authorized to institute mandatory (that is, not requested by the customer) blocking of 976 service after the first bill disputed by the customer was adjusted and a second request for an adjustment was made by the customer.

On May 24, 1988, the Commission issued its ORDER AFTER RECONSIDERATION OF MARCH 10, 1988 ORDER in the above docket. In that Order, the Commission reaffirmed its March 10, 1988 Order and required that Northwestern Bell's adjustment policy (its method of forgiving end users their disputed bills) should be in writing.

The Complaint Filed by Love, Inc.

Love, Inc. is a Minnesota information provider which offers such services as an introductory dating service and a party gab line through 976 service. Love, Inc. contracts with US WEST for its 976 service.

In May, 1990, Love, Inc. received a letter from US WEST in which US WEST threatened to disconnect Love, Inc.'s 976 service. US WEST stated that it intended to disconnect Love, Inc. because three of Love Inc.'s services had accumulated adjustments of over 30% of billings over a three month period. US WEST based its threatened termination upon the contract between itself and Love, Inc., which stated in part:

Should USWC as a private corporation concerned about its public reputation determine, **in its sole discretion**, that certain types of Programs are or will be detrimental to its reputation or its ability to provide 976, USWC will exercise its prerogative to refuse to provide 976 for such Programs, with or without notification to the IP. Such determination and decision by USWC shall not be subject to challenge or appeal in any form in the absence of bad faith, fraud, or malice on the part of USWC. (Emphasis supplied).

US WEST informed Love, Inc. that a service which generated an adjustment rate of more than 20% of billed revenue over a three month period constituted a threat to US WEST's reputation and thus grounds for termination. The Company reasoned that widespread dissatisfaction with Love, Inc.'s services would reflect poorly upon US WEST as access provider and billing agent. Since Love, Inc. had exceeded US WEST's standard for disconnection, Love, Inc.'s 976 access would be terminated.

In its complaint filed in response to US WEST's termination threat, Love, Inc. asked the Commission to prevent US WEST's termination of 976 access. Love, Inc. also accused US WEST of being inappropriately generous in its adjustments of customers' bills, and of mishandling the blocking system. In later modifications to its complaint, Love, Inc. asked the Commission to establish a maximum monthly 976 charge, after which the customer could not receive further "credit" by accessing Love, Inc.'s services through US WEST's 976 access lines.

Commission Jurisdiction

Minn. Stat. § 237.59, subd. 1 (3) designates billing and collection services as emergingly competitive telephone services if they are provided by a telephone company which has elected to be emergingly competitive. US WEST has so elected. The access service provided by US WEST to Love, Inc. is a non-competitive telephone service. While Love, Inc.'s actual products are information and entertainment and not telephone service, the products are provided by and through US WEST's access service, billing and collection, all of which are telephone services. The Commission thus has jurisdiction over issues relative to the distribution of Love, Inc.'s product through US WEST's 976 service, and US WEST's billing and collection agreements with

Love, Inc.

The Standard for Disconnection

As common carriers, telephone companies are required under state and federal law to provide telephone service to the public without discrimination. A telephone company's duty to provide public access is set out in Minn. Stat. § 237.06, which states in part, "It shall be the duty of every telephone company to furnish reasonably adequate service and facilities for the accommodation of the public..."

Minn. Rules, Parts 7810.1800 and 7810.1900 list certain circumstances under which a Minnesota telephone company may discontinue service and thus preclude access to a customer. The latter rule is confined to emergency situations. Minn. Rules, Part 7810.1800 lists the only possible nonemergency reasons for terminating service. US WEST based its right of termination upon subpart F, "for customer's breach of the contract for service between the utility and the customer."

US WEST argued that Love, Inc. had violated its contract by acting in a manner detrimental to US WEST's reputation. According to US WEST, the method of measuring detriment to its reputation was found in US WEST's communications to Love, Inc., in which US WEST stated that adjustments over 20% of revenue would be considered to be detrimental.

The Commission finds that this attempt to create a standard for disconnection is insufficient. The US WEST contract term upon which it relied ("detrimental to its reputation or its ability to provide 976") is too vague to be enforceable and was never filed with the Commission. If US WEST wished to change the contract term by adding the 20% adjustment factor, it was required to file a change of term or condition of service in its tariff. Since this was not done, the attempted clarification was ineffective.

The Commission finds that US WEST has no grounds for terminating Love Inc.'s service. Love, Inc. has not violated any written contract term or otherwise provided grounds for disconnection under Minn. Rules, Part 7810.1800. US WEST is obliged under its common carrier responsibility to continue to provide 976 service to Love, Inc. under these circumstances.

The Commission notes that US WEST indicated at the March 25 meeting that it would not pursue termination of 976 service for Love, Inc. at this time. The Commission applauds the Company's decision, in light of the Commission's above analysis.

US WEST's Adjustment Policy

Love, Inc.'s complaint raised several issues regarding US WEST's policy of adjusting bills following customer complaints or

inquiries. Love, Inc. cited three major areas of controversy regarding US WEST's adjustments: repeated adjustments, failed blocking attempts, and the idea of a maximum monthly charge for 976 service.

Repeated Adjustments

In its complaint, Love, Inc. alleged that US WEST allowed customers to obtain adjustments of disputed bills month after month. Love, Inc. was opposed to the concept of repeated adjustments because any amount adjusted from a customer's bill reduces Love, Inc.'s revenue in the same amount. Love, Inc. felt that repeated requests for adjustments indicated a subscriber who was deliberately abusing the system.

The Commission's March 10, 1988 Order required telephone companies to adjust "the first disputed 976 bill...to the satisfaction of the customer." After that first adjustment and a subsequent request for a second adjustment, the Company was authorized under the March 10 Order to institute involuntary blocking on the customer. Love, Inc. urged the Commission to **require** US WEST to initiate blocking after the first dispute is resolved. The RUD-OAG and US WEST opposed the idea of requiring the Company to initiate mandatory blocking.

The Commission finds that the Company must be allowed discretion to block or not to block after the first adjustment. There are instances in which a customer may have two or more legitimate, independent reasons for requesting an adjustment to his or her bill for 976 service. The Commission will not require that such a customer be blocked from access to telephone service. US WEST will remain authorized, however, to block after the first adjustment.

The Commission understands the concern of Love, Inc. and other IPs regarding abusers of the system. The Commission will clarify that the one-time adjustment required under its March 10 Order refers to one adjustment **per subscriber**. Thus, US WEST is not compelled under the March 10 Order to adjust once each time a subscriber complains regarding an individual 976 service. After the first request for adjustment of a 976 service is resolved, US WEST in its discretion may move towards blocking of the subscriber.

Failed Blocks

In its complaint, Love, Inc. alleged that there have been instances in which subscribers have requested blocking, US WEST has failed to apply the block, and US WEST has deducted the resulting adjustment from Love, Inc.'s revenues. US WEST answered that there have been very few failed blocks since its system was perfected, and that US WEST has absorbed the

adjustments from the few failures which did occur.

The Commission takes no position regarding any disputes of fact between the parties. As a matter of policy, the Commission finds that adjustments should be made to a customer's bill if US WEST fails to institute blocking following a customer request. The adjustment should be absorbed by US WEST and not be charged back to Love, Inc.

Maximum Monthly Charges

US WEST employs a system called Unbilled Toll Itemized Calls (UBIC), which is an internal tracking system for debt control. UBIC uncovers unusually high toll charges placed by a subscribing line. US WEST can then use this information to inform customers of the unusual charges, thus screening some abuses such as the use of a stolen calling card. UBIC does not distinguish to whom the toll call is made.

Love, Inc. requested the Commission to order US WEST to use UBIC to establish a maximum monthly charge for each subscriber. Love, Inc. wanted US WEST to place a mandatory block upon the line once the monthly maximum had been exceeded. Love, Inc. reasoned that this would be the best means of preventing abuse by certain customers. No one would be able to incur large bills for 976 service, then receive an adjustment for the charges. US WEST opposed Love, Inc.'s request, stating that UBIC was an internal debt control system not suited for establishing a credit line for customers.

The Commission finds that it would be inappropriate for the Commission to limit a subscriber's access to telephone service. There is nothing in Commission rule or statute or in the contractual terms between the parties which would justify such a limitation. The Commission will not establish a monthly maximum charge for 976 service.

Claims for Damages

Love, Inc. has submitted documents supporting a claim for damages from US WEST. The Commission finds that the issue of damages is beyond the scope of this proceeding, which is focused on the tariffs and price lists governing US WEST's and Love, Inc.'s relationship. The Commission notes that Love, Inc. has instituted a proceeding in state district court, in which it is seeking damages from US WEST. Any issues of damages should be pursued in the district court proceeding.

ORDER

1. US WEST shall not disconnect Love, Inc. from 976 service for adjustments in excess of 20% of revenues, under the current tariff.

2. US WEST is authorized to initiate mandatory blocking of 976 service after one adjustment of a disputed bill per subscriber is made. Mandatory blocking after the first adjustment shall be in the discretion of US WEST.
3. If a customer requests a block and US WEST fails to effect the block, US WEST shall be financially responsible for any adjustment requested by the customer due to the failed block.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

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